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OFFICE OF PETITIONS

In re Application of :
Lapstun, et al. :
Application No. 09/575,154 :
Filed: may 23, 2000 :
Attorney Docket No. NPT001US :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed March 11, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a timely and proper response to the final office action mailed July 3, 2003. The final Office action set a shortened statutory period for reply of three months from its mailing date. No response was believed to have been received within the allowable period, and the application became abandoned on October 4, 2003. A Notice of Abandonment was mailed on February 24, 2004.

The record reflects that a petition to withdraw the holding of abandonment was filed on March 8, 2004, asserting that an amendment responsive to the final Office action was filed on September 3, 2003, via facsimile. A certificate of transmission, pursuant to 37 CFR 1.8, accompanied the petition. The petition was dismissed by a decision mailed February 8, 2005, because the amendment failed to place the application in condition for allowance. It is noted that petitioner relies, in part, on the decision of February 8, 2005, in making the instant argument that the abandonment of the application was unavoidable. Accordingly, for purposes of the record, it is important to note that the Director of Technology Center 2800 erred in indicating that the evidence supported petitioner's contention that alleged reply of September 3, 2003, was lost after being deposited with the United States Postal Service. In fact, record demonstrates that the amendment was filed via facsimile as the petition to withdraw the holding of abandonment was accompanied by a certificate of transmission indicating that the amendment was transmitted via facsimile on September 3, 2003, not by mail.

Based on the evidence presented and the papers filed on March 8, 2005, it is believed that the abandonment of the application was unavoidable as a response was filed via facsimile, on September 3, 2003, but subsequently lost by the Patent and Trademark Office.

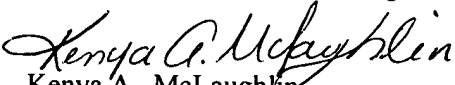
The Request for Continued Examination, filed March 11, 2005, is noted and made of record.

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The application is being directed to Technology Center 2800, GAU 2876 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.


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Office of Petitions